

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GREEN TREE SERVICING LLC,

Plaintiff(s),

v.

VALENCIA MANAGEMENT LLC
SERIES 4, et al.,

Defendant(s).

Case No. 2:15-CV-725 JCM (PAL)

ORDER

Presently before the court is defendant Silverado Court Landscape Maintenance Corporation's ("Silverado") motion to dismiss the amended complaint. (ECF No. 48). Also before the court are plaintiff Green Tree Servicing LLC's ("Green Tree") motion for summary judgment (ECF No. 52), Silverado's motion for summary judgment (ECF No. 55), and defendant Valencia Management LLC Series 4's ("Valencia") motion for summary judgment (ECF No. 56). Lastly before the court is the parties' stipulation and order for extension of time. (ECF No. 68).

Green Tree's complaint seeks to invalidate Silverado's foreclosure sale of a property, which purportedly extinguished Green Tree's beneficial interest in a \$260,800 mortgage loan. Green Tree's second amended complaint alleges, amongst other things, that Nevada Revised Statute 116.3116 is unconstitutional. (ECF No. 44 at 12).

A party who files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute must promptly "file a notice of constitutional question stating the question and identifying the paper that raises it, if . . . the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity" FED. R. CIV. P. 5.1(a)(1)(B). Additionally, FRCP 5.1 requires the court to "certify to the appropriate attorney

1 general that a statute has been questioned” under 28 U.S.C. § 2403. FED. R. CIV. P. 5.1(b). Section
 2 2403 states that the court “shall permit the [s]tate to intervene for presentation of evidence, if
 3 evidence is otherwise admissible in the case, and for argument on the question of
 4 constitutionality.” 28 U.S.C. § 2403(b).

5 In light of the foregoing rule and statute, the court will deny plaintiff and defendants’
 6 motions without prejudice to allow: (1) Green Tree to file a notice of constitutional question, (2)
 7 the court to comply, and (3) the attorney general to intervene. The parties may renew their motions
 8 after the attorney general has been afforded time to respond.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Silverado
 10 Court Landscape Maintenance Corporation’s motion to dismiss amended complaint (ECF No. 48)
 11 be, and the same hereby is, DENIED without prejudice.

12 IT IS FURTHER ORDERED that plaintiff Green Tree Servicing LLC’s motion for
 13 summary judgment (ECF No. 52) be, and the same hereby is, DENIED without prejudice.

14 IT IS FURTHER ORDERED that defendant Silverado Court Landscape Maintenance
 15 Corporation’s motion for summary judgment (ECF No. 55) be, and the same hereby is, DENIED
 16 without prejudice.

17 IT IS FURTHER ORDERED that defendant Valencia Management LLC Series 4’s motion
 18 for summary judgment (ECF No. 56) be, and the same hereby is, DENIED without prejudice.

19 IT IS FURTHER ORDERED that the parties’ stipulation and order for extension of time
 20 (ECF No. 68) be, and the same hereby is, DENIED as moot.

21 IT IS FURTHER ORDERED that Green Tree Servicing LLC shall promptly file a notice
 22 of constitutional question, pursuant to Federal Rule of Civil Procedure 5.1(a)(1)(B).

23 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
 24 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
 25 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
 26 Nevada for presentation of argument on the question of the constitutionality of the statute.

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1 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
2 certified mail to the Nevada attorney general.

3 DATED July 19, 2016.

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5 UNITED STATES DISTRICT JUDGE
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